

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6481

BILL NUMBER: SB 140

NOTE PREPARED: Jan 30, 2012

BILL AMENDED: Jan 30, 2012

SUBJECT: Slot Machine Wagering Tax.

FIRST AUTHOR: Sen. Kenley

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) The bill specifies when gambling game receipts are considered received by a racetrack casino. It also specifies that the General Assembly does not acquiesce in any interpretation to the contrary. The bill provides that a licensee may elect to pay the slot machine wagering tax using taxable receipts rather than adjusted gross receipts and defines taxable receipts as adjusted gross receipts minus amounts paid to support the horse racing industry.

It provides that a licensee's election is considered revoked if the licensee claims a refund on the grounds that various taxes, fees, and other obligations should not have been included in the licensee adjusted gross receipts. It also applies the current tax structure to a licensee revoking the election as of the business day following the date of the revocation. The bill repeals an unused definition.

The bill provides that the Attorney General, with the assistance of the Department of State Revenue, shall represent the state and the Department of State Revenue in all civil actions concerning: (1) the determination or collection of the slot machine wagering tax; or (2) a claim for the refund of slot machine wagering tax.

Effective Date: (Amended) Upon Passage; January 1, 2012 (retroactive).

Explanation of State Expenditures: (Revised) The Attorney General and Department of State Revenue (DOR) should be able to implement with their existing level of resources the requirement relating to representation of the state and the DOR in civil actions relating to determination, collection, and refund of slot machine wagering tax.

Explanation of State Revenues: Summary: The bill reduces the racino slot machine wagering tax base to 85% of adjusted gross wagering receipts (AGR) generated at a racino, if the racino elects to pay the tax on that basis and agrees not to claim a refund of taxes paid before January 1, 2012, on the grounds that any of the taxes or fees specified in (1)-(5) below should not have been included in the racino's AGR. The reduction in the slot machine wagering tax base would be from: (1) 100% to 85% of AGR from January 1, 2012, to June 30, 2012; and (2) from 99% to 85% of AGR beginning July 1, 2012.

- (1) the 15% of AGR that is distributed to various horse racing purposes and the state General Fund;
- (2) the county slot machine wagering tax;
- (3) the Gaming Integrity Fee;
- (4) the Problem Gaming Fee; or
- (5) the supplemental slot machine wagering tax paid to the French Lick Casino.

The bill could result in a saving to the state of an estimated \$65 M, if the racinos agree not to pursue refunds of slot machine wagering taxes paid before January 1, 2012, on the 15% of AGR distributed to horse racing purposes and the state General Fund.

The reduction in the tax base to 85% of AGR would have no fiscal impact because: (1) this codifies the U.S. Bankruptcy Court ruling on the imposition of the slot machine wagering tax under *In re Indianapolis Downs, LLC., et al., Case No. 11-11046 (BLS) (Bankr. D.DE 2011)*; and (2) the Revenue Technical Committee forecast (December 14, 2011) for the slot machine wagering tax was reduced to account for the revenue impact of the Court ruling and the actions by both racinos to begin remitting the wagering tax based on 85% of AGR in accordance with the Court ruling. The reduced remittances by the racinos began in November 2011 (Indy Live on November 1st and Hoosier Park on November 9th). The Revenue Technical Committee forecast for the slot machine wagering tax was reduced by \$16 M in FY 2012 and \$20.4 M in FY 2013 to account for the change in remittances. It is estimated that refunds of slot machine wagering tax paid on the 15% of AGR distributed to horse racing purposes and the state General Fund could potentially total \$65 M.

Background Information: Under current statute, the racinos are required to pay 15% of AGR generated during the fiscal year for the following purposes: (1) the state Gaming Integrity Fund; (2) the state Breed Development Funds; (3) private horsemen's associations; (4) horse racing purses; and (5) the state General Fund. Under *In re Indianapolis Downs, LLC., et al., Case No. 11-11046 (BLS) (Bankr. D.DE 2011)*, the Court heard a motion by Indianapolis Downs (owner of the Indy Live racino) for a determination of the legality of the slot machine wagering tax being imposed on all AGR amounts generated by the racinos, including the 15% of AGR distributed to various horse racing purposes and the state General Fund. The court ruled that the tax not be imposed on this 15% AGR distribution. In addition, the court granted a request by Hoosier Park (involved in a bankruptcy proceeding in the same Court) to join Indianapolis Downs' position. Consequently, the Court's ruling applies to both racinos.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of State Revenue; Attorney General.

Local Agencies Affected:

Information Sources: Revenue Technical Committee Forecast (December 14, 2011); In re Indianapolis Downs, LLC., et al., Case No. 11-11046 (BLS) (Bankr. D.DE 2011).

Fiscal Analyst: Jim Landers, 317-232-9869.